

**CALIFORNIA COASTAL COMMISSION**

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Filed: 10/31/03  
Staff: AJP-LB  
Staff Report: 3/2/05  
Hearing Date: 3/16-18/05  
Commission Action:

**W7c.****STAFF REPORT: DE NOVO**

**LOCAL GOVERNMENT:** City of Los Angeles

**LOCAL DECISION:** Approval with Conditions

**APPLICATION NUMBER:** A-5-PPL-03-465

**APPLICANT:** Y.M.C.A. of Metropolitan Los Angeles

**PROJECT LOCATION:** 15601 Sunset Boulevard, Pacific Palisades City of Angeles (County of Los Angeles)

**PROJECT DESCRIPTION:** Request for after-the-fact approval for placement of two trailers, portable restrooms, and storage containers on a seasonal basis, installation of a chain link fence on a seasonal basis, and the operation of an annual retail sale facility for the sale of Christmas trees between December 1<sup>st</sup> and 25<sup>th</sup> and annual retail sales of Halloween pumpkins between October 15 and 31<sup>st</sup>; and operation of a youth day camp in the OS-1XL and OS-1-H Zones in proposed Parcel A of Parcel Map PMLA No. 7245. In addition, the project includes subdivision of an existing 56.78-acre parcel into two parcels (Parcel A: 3.95 acres and Parcel B: 52.83 acres) in the RE40-1-H zone.

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**SUMMARY OF STAFF RECOMMENDATION**

The major issues of this proposed development include public access, protection of environmentally sensitive resources, and future development. Staff recommends **APPROVAL** of the proposed development with seven special conditions that require: 1) the applicant to record an open space restriction to protect environmentally sensitive habitat area and buffer area; 2) the applicant to record an offer of an access easement for a public access trail; 3) evidence of a recorded roadway easement for public use; 4) future use of the property will be limited to day camp activities, temporary events, seasonal fund raising sales, public recreation, and open space. All proposed future development will be evaluated as to the potential impacts to public access to and from the adjacent public park, on views from park, on any Environmentally Sensitive Habitat Areas, and on water quality; 5) notification to applicant that this permit action has no effect on conditions imposed by

the local government pursuant to an authority other than the Coastal Act; 6) the applicant shall record a deed restriction against the property imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property; 7) because some development has occurred without a coastal development permit, the applicant shall comply with all conditions within 120 days of approval of this permit.

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### **SUBSTANTIVE FILE DOCUMENTS:**

1. Parcel Map No. 7245
2. Los Angeles City CDP No. 98-004/ZA 98-0229(NC)
3. Coastal Commission's Coastal Development Permit No. 5-91-816

### **Staff Note:**

The proposed development is within the coastal zone area of the City of Los Angeles. Section 30600(b) of the Coastal Act allows local government to assume permit authority prior to certification of a local coastal program. Under that section, the local government must agree to issue all permits within its jurisdiction. In 1978, the City of Los Angeles chose to issue its own coastal development permits.

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction area, the Coastal Act requires that the development which receives a local development permit also obtain a permit from the Coastal Commission. Section 30601 requires a second coastal development permit from the Commission on all lands located (1) between the sea and the first public road, (2) within 300 feet of the inland extent of a beach, or the sea where there is no beach, (3) on tidelands or submerged lands, (4) on lands located within 100 feet of a wetland or stream, or (5) on lands located within 300 feet of the top of the seaward face of a coastal bluff. Outside that area (which is known as the Dual Permit Jurisdiction area), the local agency's (City of Los Angeles) coastal development permit is the only coastal development permit required. Thus, it is known as the *Single* Permit Jurisdiction area.

The development approved by the City is within the single permit jurisdiction area. The City approved coastal development permit No. 98-004/ZA 98-0229 for the subdivision and continued use of the site for seasonal sales and a summer day camp, which included after-the-fact authorization of the placement of two temporary trailers and the chain link fence. The City's permit was appealed by two groups: No Oil, Inc. (c/o Barbara Kohn) and Friends of Temescal Canyon. In July 2004, the Commission found the appeal to raise a substantial issue based on impacts on coastal resources and public access. Subsequently, the proposed project was scheduled for De Novo hearing. The De Novo portion of the appeal is the subject of this staff report.

**I. MOTION, STAFF RECOMMENDATION AND RESOLUTION FOR COASTAL DEVELOPMENT PERMIT NO. A-5-PPL-03-465:**

Staff recommends that the Commission make the following motion and adopt the following resolution:

Staff recommends that the Commission make the following motion and adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit #A-5-PPL-03-465 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. Open Space

A. No development, as defined in section 30106 of the Coastal Act, shall occur in the upper northern portion of the property of Parcel A that the Commission has determined to be an Environmentally Sensitive Habitat Area due to the presence of Coastal Sage Scrub, or within a 50 foot buffer around that area, as shown in Exhibit No. 5 to the March 3, 2005 staff report, and more precisely described and depicted in Exhibit No. 1 attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, except for:

1. vegetation removal for fire management and removal of non-native vegetation; and
2. the following development, if approved by the Coastal Commission as an amendment to this coastal development permit:

road maintenance and improvements to existing roadway; and planting of native vegetation.

**B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as Exhibit No. 1 to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 5 attached to the staff report dated March 3, 2005.

#### 2. Public Trail Access

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit an irrevocable offer to dedicate a 10-foot wide access trail easement, beginning at Sunset Boulevard and providing public access to the Santa

Monica Mountains Conservancy property to the north, as required by the City of Los Angeles in Parcel Map approval PMLA No. 7245, generally depicted in Exhibit No. 12 attached to the staff report dated March 3, 2005.

- B.** The irrevocable offer shall be of a form and content approved by the Executive Director, free of prior encumbrances, except for tax liens, that the Executive Director determines may affect the interest being conveyed, and shall provide the public the right to improve the access easement for pedestrian and bicycle access. The dedicated access easement shall not be open for public use until a public agency or private association approved by the Executive Director agrees to accept responsibility for maintenance and liability associated with the access easement. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The offer shall run with the land in favor of the State of California binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.
- C.** As an alternative to the requirements in paragraphs A and B of this condition, the applicant may provide evidence that the Santa Monica Mountains Conservancy is reserving such an easement for itself in its sale of Parcel A to the YMCA and that such reservation is set forth in the Grant Deed that conveys title to Parcel A and will become effective upon completion of the sale.

### **3. Public Roadway Access**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, evidence of recordation of a roadway easement for public vehicle egress and ingress, along the southwest corner of Parcel A, beginning at Sunset Boulevard, of sufficient size and in the proper location to ensure continued public vehicle access to Temescal Canyon Gateway Park, as generally depicted in Exhibit No. 12 attached to the staff report dated March 3, 2005. The easement shall measure approximately 25 feet wide and approximately 265 feet in length. The applicant shall include a plan showing the location of the access easement. Evidence that the Santa Monica Mountains Conservancy is reserving such an easement for itself in its sale of Parcel A to the YMCA, and that such reservation is set forth in the Grant Deed that conveys title to Parcel A and will become effective upon completion of the sale may suffice to satisfy this requirement.

### **4. Future Development and Use of the Site**

- A.** This Coastal Development Permit A5-PPL-03-465 is only for the development expressly described and conditioned herein. The permittee shall undertake

development in accordance with the approved coastal development permit. Any proposed changes to the development shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

- B.** Use of the site will be limited to day camp activities, temporary events, seasonal fund raising sales, public recreation, and open space. All proposed future development will be evaluated as to, but not limited to, the potential impacts to public access to and from the adjacent public park, visual impacts from the park and Sunset Boulevard, impacts to any Environmentally Sensitive Habitat Areas, and water quality impacts. All future development shall be sited and designed to avoid, where feasible, and mitigate where significant impacts are unavoidable, all significant impacts to public access and recreation and minimize all impacts to coastal resources on and surrounding the site.

## **5. Local Government Approval**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act. In the event of conflict between the terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of Coastal Development Permit A5-PPL-03-465 shall prevail.

## **6. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **7. Condition Compliance**

Within 120 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the

applicant shall satisfy all the requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. Project Description and Area History**

The applicant is proposing the subdivision of an existing 56.78 acre parcel into two parcels (Parcel A: 3.95 acres, and Parcel B: 52.83 acres) and requesting after-the-fact approval for placement of two trailers, portable restrooms, and storage containers on a seasonal basis, installation of a chain link fence on a season basis, and the operation of an annual retail sales facility for the sale of Christmas trees between December 1<sup>st</sup> and 25<sup>th</sup> and annual retail sales of Halloween pumpkins between October 15 and 31<sup>st</sup>; and operation of a youth day camp in the OS-1XL and OS-1-H Zones in proposed Parcel A of Parcel Map PMLA No. 7245.

The property subject to the proposed subdivision is located within Temescal Canyon, just north of Sunset Boulevard, in the Pacific Palisades area of the City of Los Angeles (see Exhibit No. 1). The 56.78 acre parcel has approximately 300 feet of frontage along Sunset Boulevard and extends north from Sunset Boulevard approximately 5,000 feet (see Exhibit Nos. 2-4).

The subject property is zoned OS-1XL and OS-1-H (Open Space). The property was previously zoned RE40-1 (Residential Estate Zone) until it was changed to the current Open Space zoning in 1999.

The YMCA of Metropolitan Los Angeles has an agreement with the Santa Monica Mountains Conservancy, which owns the approximately 140-acre Temescal Canyon Gateway Park (see Exhibit No. 7) in which the 56.78-acre subject parcel lies. The agreement allows the YMCA to use a 3.95-acre (proposed Parcel A) portion of the 56.78-acre Conservancy property. The Conservancy also leases to the YMCA the existing swimming pool located outside of the 3.95 acre portion on Parcel B. The Santa Monica Mountains Conservancy and YMCA entered into an Agreement, dated November 8, 1994, which granted the YMCA the right to continue use of the 3.95 acre site to conduct the type of activities as have been conducted in the past and which are currently occurring on the site, and provides YMCA the option to purchase the Parcel A once the proposed subdivision is approved.

According to City records, the YMCA has used the property for 35 years. The upper portion of the property (proposed Parcel B) is developed with a swimming pool operated and maintained by the YMCA and other buildings owned and operated by the Santa Monica Mountains Conservancy (see Exhibit No. 7). Proposed Parcel A, the lower 3.95 acre parcel, is currently undeveloped with the exception of the seasonal placement of two unpermitted

trailers, portable restrooms, storage containers, and a chain link fence which are used by the YMCA for the annual sales of Christmas trees, Halloween pumpkins, and summer day camp. Under the City's zoning, the annual sales were a use allowed by right when the property was zoned R3-1 and has continued through subsequent down-zonings. The site has been used for the annual sales since 1976.

Historically proposed Parcel A was developed with a gas station and store. The gas station was built sometime in the 1920's, according to a letter submitted to the City of Los Angeles Deputy Advisory Agency by the Pacific Palisades Historical Society, dated September 13, 2002. It is not known when these structures were removed. Remnants of an asphalt road and concrete pads are located on the site. The proposed Parcel B is developed with a swimming pool and access road, just north of Parcel A, and other facilities further north into the canyon that were constructed by previous property owners prior to the Coastal Act.

Minimum density single-family residential development lies to the east and low/ medium multiple family residential uses lie to the south. A high school is located across Sunset Boulevard directly to the southwest and a condominium complex is located just to the east. The City's permit includes authorization for the applicant's continued use of the smaller lot (proposed Parcel A) for annual or seasonal sales that have taken place regularly since 1976. Although the uses have existed on the site since 1976, and no changes are being proposed, the uses were included in the City's permit because, under the current City zoning of OS (Open Space), the uses are non-conforming legal uses and the City code required that a variance be issued for the continuance of the non-conforming uses. Similarly, unless the applicant establishes a vested right in the episodic activity, a CDP is also needed for each new use of the site that constitutes development.

The City's permit was a combined Coastal Development Permit and variance for the existing uses, and a Parcel Map approval for the proposed subdivision. Although the express terms of the City's CDP (ZA-98-004) are somewhat unclear as to whether it covers the subdivision, there is some evidence in the findings that it may have been intended to do so, and the City has indicated in a letter to Commission staff, dated May 13, 2004, that the City's approval of the CDP did indeed cover both the parcel Map (PMLA No. 7245) and the continuation of the non-conforming uses.

## **B. Site Ownership History**

Temescal Canyon north of Sunset Boulevard, including the project site, was owned by the Presbyterian Synod from 1943 to 1994. The Synod used the canyon as a private retreat center and allowed the YMCA to use the subject property (proposed Parcel A) for a children's summer day camp, and for the seasonal sale of pumpkins since 1983 and Christmas trees since 1976. Under a 1985 agreement, the Synod gave the YMCA an option to acquire the subject property and continue using the property. Then in 1994, the Synod sold the entire 56.78-acre property to the Santa Monica Mountains Conservancy. As part of the purchase agreement with the Conservancy, the Conservancy agreed to honor the YMCA's option to

acquire the subject 3.95-acre portion of the property and the continued shared use and maintenance of the swimming pool on proposed Parcel B.

**C. Description of Local Approval**

On January 15, 2003, the City's Zoning Administrator approved a coastal development permit (98-004), with conditions, for the:

*Continued use and maintenance of nonconforming annual retail sale of Christmas trees between December 1<sup>st</sup> and December 25<sup>th</sup> and nonconforming annual retail sale of Halloween pumpkins between October 15<sup>th</sup> and October 31<sup>st</sup>, and youth day camp in the OZ1XL and OS-1-H zones in proposed Parcel A of PMLA No. 7245.*

The City also included a variance [ZA 98-0229(NC)] for the existing non-conforming uses. In conjunction with the City's Coastal Development Permit and variance, the Deputy Advisory Agency approved the preliminary Parcel Map No. 7245 (PMLA No.7245) for the subdivision of the 56.78-acre property into two parcels consisting of a 3.95 acre parcel (A) and a 52.83 acre parcel (B). As part of the City's action on the CDP, the Parcel Map approval included Coastal Act findings for the subdivision of the property. According to the City, the City's approval of the CDP included the Parcel Map and its Coastal Act findings.

The Zoning Administrator's decision on the CDP, and the Deputy Advisory Agency's decision on the preliminary Parcel Map, were appealed to the West Los Angeles Area Planning Commission. On March 19, 2003, the West Los Angeles Area Planning Commission sustained the actions of the Zoning Administrator and the Deputy Advisory Agency.

**D. Public Access and Recreational Resources**

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30213 of the Coastal Act states, in part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30223 of the Coastal Act:

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The project site is located adjacent to and north of Sunset Boulevard, and immediately east of the entrance to the recreational area of Temescal Canyon Gateway Park. Temescal Canyon Gateway Park is a 141-acre recreational park developed with a 74 space paved parking lot and pocket park, located directly west of the proposed Parcel A. The park also includes information kiosks, restrooms, picnic areas and trails, conference center, camp store and classrooms and nature facility/ranger residence. The park property provides public access and recreational opportunities, such as hiking and biking, and provides access to Topanga State Park further to the north.

In 1992, the Commission approved a Coastal Development Permit for the development of 20.5 acres of Temescal Gateway Park (CDP No. 5-91-816) by the entity that then owned it, the Presbyterian Synod. The improvements were located just north of Sunset Boulevard and west of the access road. Improvements included a 74-space parking lot, pocket park, restrooms, nature facility/ranger residence, and walking paths and improvements to the park entrance along Sunset Boulevard.

The proposed subdivision will create 3.95-acre parcel (Parcel A) and a 52.83-acre parcel (Parcel B). Parcel A will be located along Sunset Boulevard with approximately 300 feet of street frontage along Sunset Boulevard. Parcel A will be purchased by the YMCA per the purchase agreement with the underlying property owner, Santa Monica Mountains Conservancy. Parcel B is located north of Parcel A and extends further into the Canyon. Parcel B will continue to be owned by the Conservancy.

Because of the location of the project site in relation to the adjacent parkland, the proposed subdivision and any potential future development of the site could have an adverse impact to access and recreational opportunities in the area. Opponents to the project indicate that the lower portion of the property is used by the public for hiking and access to the park and any future development could impact existing public use (see letters submitted by residents, Exhibit No. 8). The opponents point out, as evidence of public use of the property, dirt trails that traverse the property. Furthermore, Mr. Frank Angel, representing the Sierra Club, asserts that by allowing the subdivision, the Commission would be allowing the loss of State land and loss of recreational opportunities on and across Parcel A and that the YMCA's future development plans would replace the parkland with high-cost, exclusionary programs or facilities, and displace general public access.

There are two worn unimproved pathways along the perimeter of proposed Parcel A. One is located along the unimproved (no sidewalk) public right-of-way area of Sunset Boulevard. This pathway provides pedestrian access along Sunset Boulevard and to the park's entrance road. The second pathway is located along the western boundary of proposed Parcel A. This pathway basically parallels the access road into the park and provides pedestrian access into the park. The remaining area of Parcel A consists of worn and compacted areas, but there are no discernible trails. As stated, prior to 1994 this portion of the canyon had been in private ownership. The Synod and YMCA have used this portion of the property for many years and any footpaths through the property have most likely been created by their

use. However, it is also possible, since the opening of Temescal Canyon Gateway Park for public use, that, as the project opponents claim, the public has used Parcel A as a short cut from Sunset Boulevard to access the park property, or used the western edge of the proposed parcel, adjacent to the access road, to access the park.

Other than stating that the public uses the site, the opponents have not presented any evidence of public use of the property. Furthermore, Parcel A would take up approximately 300 feet along the north side of Sunset Boulevard. Sunset Boulevard will continue to provide vehicle and pedestrian access to the entrance of the canyon. Immediately to the west and adjacent to the subject property is the access entrance road leading into the park and the adjacent public parking lot west of the road.

In the City's approval of the subdivision (PMLA no. 7245), the City required as a condition of approval, that a 10-foot wide public easement for hiking purposes be provided through the subject property to the Santa Monica Mountains Conservancy property to the north. The 10-foot wide easement will be located adjacent to and parallel to the entrance road to provide safe pedestrian access off the public park's entrance road from Sunset Boulevard (see Exhibit No. 12 for the general location of the trail easement). With the required access easement along the western portion of Parcel A, the proposed subdivision will not adversely impact the public's ability to access the entrance road from along Sunset.

Furthermore, the configuration of the proposed Parcel A has the lower southwest corner extending into the access road used for public vehicle access into the park. In 1992, a reciprocal easement that allows shared use of the roadway between the Conservancy and the Presbyterian Church (previous property owner) was recorded for access by both property owners (See Exhibit No. 7). According to the YMCA and the Conservancy, a road easement will continue to be provided to allow public access across the southwest corner of Parcel A to the Conservancy property, generally depicted in Exhibit No. 12. To ensure that public vehicle access will continue to be provided, Special Condition No. 3 requires that prior to issuance of the permit, the applicant submit evidence, including a site plan and legal description, indicating that a road easement for public access has been recorded. As conditioned, the subdivision and future development will not prevent future public use of the park's entrance roadway. With the proximity of the access road and parking lot, and provision of public access and roadway easement, the proposed subdivision of the site would not have a significant impact on public access to the park.

Opponents further argue that the project will result in the loss of public recreational opportunities by converting this property from public parkland to private ownership. Prior to 1994, when the Conservancy purchased the property, the subject property, including the northern portion of the canyon was in private ownership and used as a private retreat and conference center. Since 1976, the YMCA has used the property for day camps and seasonal sales, so it has been used for private non-profit purposes for many years. When the Conservancy purchased the property, the agreement to use this property by the private non-profit YMCA for recreational use was in place. From 1985 to present, the applicant has had an option agreement, with the previous owner, and currently with the Conservancy, to

purchase the proposed Parcel A. Except for some use by the public for access to the adjoining park, there is no evidence that the property has been used as a public recreational site. However, the property is currently owned by the State's Santa Monica Mountains Conservancy. The Conservancy is dedicated to the preservation of open space and parkland, watersheds, trails and wildlife habitat for the public. Although proposed Parcel A does not currently provide a significant amount of recreational opportunities to the public, if the property was to remain in Conservancy ownership, it could be developed and recreational opportunities could be improved.

Selling of State property to a private organization would impact the Conservancy's ability to expand the parkland and provide recreational opportunities to meet the ever increasing public demand. However, in this particular case, the buyer is a long time user of the property and a non-profit organization that provides indoor and outdoor recreational opportunities to all members of the public through its membership program. The YMCA provides memberships at reasonable costs compared with other private facilities that offer similar recreational activities.

The Palisades-Malibu YMCA's main facility is located on Via del la Paz, just over a ¼ mile southeast of the proposed subdivision property. The YMCA provides a number of recreational programs for it's members including exercise classes, sport programs, swimming classes, and outdoor day camps. The YMCA uses the proposed Parcel A for day camp activities and the swimming pool on proposed Parcel B for swimming programs (the pool is maintained by the YMCA and shared with the Conservancy for their programs). Although the YMCA is a fee membership organization, it is open to all members of the public and currently provides, and will continue to provide, recreational opportunities on the proposed Parcel A. Therefore, the subdivision of the property and use by the YMCA will continue the recreational use of the property, consistent with Section 30213 and 30223 of the Coastal Act.

The YMCA's tree and pumpkin sales are not recreational activities, but are seasonal sales to raise money for the non-profit organization to fund their programs. The sales do not involve the erection of any permanent structures and all structures associated with the sales, including the perimeter fencing and trailers, are removed from the site once the sales are over. After the sales are over the site is restored to its existing condition. Access along the perimeter of the property is not impacted by the sale activities.

Therefore, the proposed subdivision and use of the property by the YMCA will not have a significant adverse impact on public recreational opportunities in the area. Furthermore, the City's parcel map permit is conditioned requiring that in the event the YMCA would to sell the property, they must offer it back to the Conservancy, other public resource agency including the City of Los Angeles, or a non-profit organization. The condition reads as follows:

*In the event that the YMCA determines to divest itself of this site and the Santa Monica Mountains Conservancy and the Mountains Recreation and Conservation Authority fails to accept it, the property shall be offered first to the Dept. of State Parks and Recreation; second to any other public resource agency including the*

*City of Los Angeles; and third to any interested non-profit organizations. At least 180 days shall be granted to exercise this transfer.*

As conditioned by the City, there is the possibility that the property will continue to provide public recreational opportunities. However, there is also the possibility that the YMCA, or any of the potential future owners, could eventually resell the property to a for-profit organization for non-recreational commercial use since there is no limitation on future sales once the YMCA sells the property and no further restrictions as to the use of the property. Therefore, to prevent the loss of the recreational potential of this site, the Commission imposes Special Condition No. 4, which notifies the applicant that all future development of the property will require a Coastal Development Permit and limits future use of the property to the existing uses, public recreation, and open space.

The YMCA has indicated no future plans to further develop the site, and staff cannot speculate as to the type of uses that may be proposed in the future by either the applicant or future owners. As stated, the YMCA provides recreational programs to their members and it can only be assumed that the YMCA will continue to offer and use this property for such programs. However, any proposed future development of the property will require a Coastal Development Permit and will need to be found consistent with the Chapter 3 policies of the Coastal Act. To ensure that the applicant is aware of the potential siting and design issues that will be evaluated once development is proposed, Special Condition No. 4 informs the applicant, that any future development will need to incorporate into the siting and design of any future development appropriate measures to reduce and mitigate any potential impacts to public access. Special Condition No.6 requires a recorded deed restriction against the property that incorporates these conditions. Therefore, as conditioned, the proposed development is consistent with Sections 30211, 30213, and 30223 of the Coastal Act.

#### **E. Environmentally Sensitive Habitat Areas**

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

According to the City's record, the property to the north and west (Temescal Canyon Gateway Park) is owned by the Santa Monica Mountains Conservancy. Temescal Canyon Gateway Park is a 141 acre park within Temescal Canyon that is developed with a parking lot just north of Sunset Boulevard and west of the proposed Parcel A, information kiosks, restrooms, picnic areas trails, swimming pool, nature facility, conference facility, and other structures. The park property provides public access and recreational opportunities, such as hiking and biking, and provides access to Topanga State Park further to the north.

Temescal Canyon, including the park area, is identified as a Significant Ecological Area by the County of Los Angeles (Los Angeles County Significant Ecological Areas Study, 1976). According to the study, the canyon contains dry chaparral and coastal sage scrub plant communities, and riparian communities along the bottom of the canyon, which contains a blue-line stream.

The County-wide Significant Ecological Area Study states that medium intensity recreational uses are compatible with the resources of the area. The park area, adjacent to the proposed subdivision property is developed with a trailhead, parking lot, picnic and play areas, restrooms, nature facility/ranger residence, and walking paths (CDP No. 5-91-816). The southwestern portion of parcel A of the proposed subdivision provides ingress into the park from Sunset Boulevard.

According to a recent Biological Assessment that was conducted by Wilson Environmental Landscape Design (November 1, 2004), proposed Parcel A is considered upland habitat, and is not directly connected to the riparian corridor of the canyon due to roadway improvements, parking lot and pocket park that separate proposed Parcel A from the riparian corridor. According to the report, the outer edge of the riparian corridor found on the adjacent park property begins 200 feet west of the proposed Parcel A boundary.

The report states that vegetation on proposed Parcel A is comprised of oak woodland, coastal sage scrub, ornamental and ruderal species. Coastal Sage Scrub (CSS) is located on the hillside in the northeastern third of proposed Parcel A, as well as throughout Parcel B (see Exhibit No. 5 for approximate location of CSS on Parcel A). According to the report this hillside area contains the greatest abundance and highest diversity of native plants and wildlife and provides the greatest biotic value to the entire proposed parcel (Parcel A).

The oak woodland includes the entire southern third of proposed Parcel A (see Exhibit No. 5). This area contains approximately 20 live oak trees, ranging in diameter from 6 to 18 inches. This area is the most impacted area of the proposed parcel with a significant percent cover of exotic trees and invasive understory weeds, and compacted soils. Because of the limited size and number of oak trees, presence of exotic trees, invasive understory, and compacted soils, proposed Parcel A does not meet the criteria as a riparian oak woodland. The applicant's biologist states that:

*Proposed Parcel A does not possess botanical, hydrologic or geologic characteristics of a riparian corridor. Its physiognomic position as a riparian/upland ecotone is unfortunately severely compromised by an asphalt parking lot and road, and maintained parkland in between Parcel A and the riparian corridor. These factors in addition to the decades-old history of anthropogenic influence within Parcel A significantly reduce its community/habitat structure and value.*

Furthermore, the report states that due to Parcel A's location at the bottom of the canyon immediately adjacent to Sunset Boulevard and surrounding development, the parcel provides only marginally functional habitat value to Temescal Canyon. The report concludes that the

CSS hillside located in the northeastern portion of the proposed Parcels A and on Parcel B provides the most valuable and functional habitat.

The Commission's staff biologist, Dr. John Dixon, has reviewed the applicant's biological assessment report and agrees with the report's assessment. Dr. Dixon states that although the CSS is somewhat constrained by surrounding development; the CSS is part of the larger strip of CSS to the north that is contiguous with extensive, undeveloped and relatively undisturbed chaparral. Because of the location and undisturbed nature of the CSS, and use of the habitat as documented in the report, Dr. Dixon concludes that the CSS on the site would be considered Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act. Dr. Dixon also recommends that the ESHA be protected from future development and include a 50 foot wide buffer around the ESHA.

The location of the CSS in the northern third of the property would not preclude the applicant from siting and designing a project that will not have a significant impact on the CSS habitat. The remaining portion of the site, outside of the CSS habitat area, is relatively flat and consists of a disturbed area and does not provide a high native biotic value according to the biological report. In addressing cumulative impacts from potential future development, the biological report states that:

*Development of proposed Parcel A and additional development within proposed Parcel B has the potential to incrementally increase deleterious cumulative impacts to wildlife habitat, water quality and downstream coastal resources. These impacts, however, would not be expected to significantly degrade these adjacent natural resources largely due to its geographic relationship to existing urban development. Existing development and infrastructure already exists within the riparian corridor throughout proposed Parcel B. Approximately two third of proposed Parcel A is and has been severely degraded for decades. Three sides of the site are surrounded by existing roads, condominiums, houses, apartment, domestic pets and a high school...*

The proposed development includes only the subdivision of the land into two separate parcels and the continued use of Parcel A for seasonal sales and summer youth day camps. The sales and summer day camp activities occur in the lower portion of the site near Sunset Boulevard and away from the CSS area. No further development of the site is being proposed at this time and the biological assessment states that the continued use of Parcel A would not pose additional or significant impacts to any sensitive resources.

The biological assessment does recommend that in the event Parcel A is developed, in order to protect riparian and coastal biotic and water quality resources, the applicant should implement mitigation measures including protecting the entire coastal sage scrub hillside area from development; water quality measures; existing trees (oaks and eucalyptus) should be protected and removal of trees mitigated to protect the habitat value; implementation of a weed management program; and siting of future buildings in flat disturbed areas.

Opponents also raise the issue of the potential for oil exploration by the applicant or future property owners and the potential impacts such activity would have on the site and

surrounding area. According to the applicant, they have no plans or desire to perform any mineral exploration on the property. Commission staff spoke with the Santa Monica Mountains Conservancy regarding mineral exploration, and they indicated that the applicant does not have any subsurface mineral rights, which belong to the State, and would not be allowed to do any oil drilling. However, the City of Los Angeles, to address this concern raised by the residents, required as a condition of the parcel map approval (PMLA 7245) that the applicant record a Covenant and Agreement stating that no oil drilling activities in any form are allowed on the property. This condition is also placed as a note on the parcel map, which will be recorded by the applicant. Furthermore, any oil drilling would require a separate coastal development permit and any impacts associated with such activity would be addressed at that time.

In past Commission permit action on proposed subdivisions, where there are known ESHA's, the Commission has required open space deed restrictions as conditions of approval of the coastal development permits, notifying the applicant and all future owners of the property of the significant biological resources on the site and the development restrictions. Although there is an existing dirt road that traverses through a portion of the CSS area, the area should be protected from future development. Therefore, to protect the existing ESHA from future impacts, the area identified in the biological assessment report as CSS habitat on Parcel A (see Exhibit No. 5), including a 50 foot buffer surrounding the area within Parcel A, shall be restricted from any future development and designated as open space. The applicant shall submit a legal description and map showing the boundary area of the CSS habitat, including the 50-foot buffer, to establish the open space restriction. The restriction shall not cover the ESHA area within proposed Lot B because it will remain in the hands of a public conservation entity. However, it remains true that the ESHA extends onto Lot B and that any proposed development of that area would be restricted by the Coastal Act's protections for such sensitive areas. The applicant shall also record a deed restriction imposing all of the Special Conditions of this permit as restrictions on the use and enjoyment of the property, which will cause the open space restriction, as well as all the other special conditions, to appear on the deed to the land to notify prospective future owners of these restrictions.

Once coastal development permit applications are submitted for any future development to the site, potential impacts to the biological resources of the site caused by future development can be minimized through the incorporation of the recommendations made by the applicant's biological consultant. To ensure that the applicant is aware of the potential siting and design issues that will be evaluated once development is proposed, Special Condition No. 4 informs the applicant that any future development proposals will need to incorporate into the siting and design of the proposed development appropriate measures to reduce and mitigate any potential impacts to public access and coastal resources that are found on and surrounding the property. Special Condition No. 6 requires a recorded deed restriction against the property that incorporates these conditions. As conditioned, the proposed land division and continuation of certain limited activities will not involve use or disruption of the habitat values of any ESHA. Therefore, the proposed division of land, as conditioned, is consistent with Section 30240 of the Coastal Act.

**F. Scenic Resources**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

and Section 30240 (b), in part states:

*(b) Development in areas adjacent to ... parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those ... recreation areas.*

As stated the proposed property is located within Temescal Canyon, just north of Sunset Boulevard, in the Pacific Palisades area of the City of Los Angeles. The 56.78 acre parcel has approximately 300 feet of frontage along Sunset Boulevard and extends north from Sunset Boulevard approximately 5,000 feet into the canyon.

The property is mostly flat with slopes along the northeastern and eastern portion of the property. The property contains oaks, eucalyptus, and acacias, and coastal sage scrub, along with ornamental plants. The City's coastal act findings state that the setting of the site is "park-like".

Because the site is undeveloped, the property provides an undeveloped open space setting. However, the surrounding area is heavily developed. The surrounding area is developed with residential and commercial development, and a high school along Sunset Boulevard to the south. Adjacent to the property to the east, single family homes are located on the canyon ridge and a multi-residential development along Sunset Boulevard. To the west is the improved paved access road into Temescal Canyon Gateway park and the public parking lot and pocket park. To the north is an outdoor swimming pool operated by the YMCA and Santa Monica Mountains Conservancy and other Conservancy office and maintenance buildings.

Opponents to the project state that future development will detract from the visual quality of the park. Although the park is located to the west of the project site, the site is separated from the park by an improved access road and paved parking lot. This portion of the park provides a pocket park for picnicking and a trailhead for the trail leading into the northern

portion of Temescal Canyon. The pocket park and trail within this portion of the park is located west of the parking lot.

Once the project is subdivided, the applicant could develop the site. Under the current open space zoning (OS), though, the applicant is limited in the type of uses allowed. Uses permitted under the current zoning include parks and recreation facilities, such as park areas, trails, picnic facilities and athletic fields. However, the applicant could also apply to the City to have the property rezoned to a zone that would allow other types of uses. Future development of the site with a structure could be visible from the public park and trailhead located to the west. Although no development is being proposed at this time and the City's parcel map approval required that no development can occur for a minimum of ten years, it is possible that in the future development could be proposed on the site. If the site were to be developed in the future, development could be visible from the park and have a visual impact on the park. However, Parcel A is located over 200 feet from the pocket park and trailhead and is separated from these recreational amenities by the park's access road and paved parking lot. This distance from the recreational area and the width of the parcel (approximately 300 feet) could provide an adequate buffer between future development and the park area. Proper siting and design including the incorporation of existing and new landscaping could significantly reduce any visual impacts that future development could have on the surrounding area.

As stated, the applicant is not proposing any physical development of the site, except for after-the-fact approval for the use of the property for seasonal sales and a day camp. These activities include moving onto the site one to two mobile trailers within the flat disturbed area of the proposed Parcel A, and erection of a perimeter chain link fence for security purposes. These continued uses do not significantly adversely impact the visual quality of the area. Therefore, the proposed subdivision of the property and continued use of the property will not adversely impact the scenic and visual qualities of the area. However, any future development of the site will require a coastal development permit and once a permit application is submitted, all development will be sited and designed to protect views and be visually compatible with the character of surrounding area. Special Condition No.4 informs the applicant, that any future development will need to incorporate into the siting and design of any future plans appropriate measures to reduce and mitigate any potential impacts to public access and coastal resources that are found on and surrounding the property. Special Condition No. 6 requires a recorded deed restriction against the property that incorporates these conditions. Therefore, as conditioned, the proposed project is consistent with Section 30251 and Section 30240 of the Coastal Act.

**G. Unpermitted Development**

Development has occurred on site without benefit of the required coastal development permit including the placement of two trailers, a chain link fence, portable restrooms, and storage containers on a seasonal basis, and the operation of an annual retail sales facility for the sale of Christmas trees between December 1<sup>st</sup> and 25<sup>th</sup> and annual retail sales of Halloween pumpkins between October 15 and 31<sup>st</sup>; and operation of a youth day camp in the OS-1XL and OS-1-H Zones in proposed Parcel A of Parcel Map PMLA No. 7245. This application includes the request for after-the-fact approval of the above referenced unpermitted development.

The site has been used since 1976 for Christmas tree sales. However, the sale activity for pumpkins and placement of the trailers occurred after the Coastal Act and have not received a coastal development permit. To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition No. 7 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action.

Although unpermitted development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

**H. Local Coastal Program**

Section 30604 (a) of the Coastal Act states that:

*Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).*

The City of Los Angeles has not prepared a draft Land Use Plan for this planning subarea. Approval of the proposed development, as conditioned to protect access and coastal resources, will be consistent with the policies in Chapter 3 of the Coastal Act and, therefore, will not prejudice the City's ability to prepare a certifiable Local Coastal Program. The Commission, therefore, finds that the proposed project is consistent with the provisions of Section 30604 (a) of the Coastal Act.

**I. California Environmental Quality Act**

Section 13096 of the California Code of Regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.